

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RACHEL TYMAN, et al.,

Plaintiffs,

-v-

No. 16 CV 6941-LTS-BCM

PFIZER, INC.,

Defendant.

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ORDER

On December 27, 2017, Magistrate Judge Barbara C. Moses issued a Report and Recommendation (docket entry no. 57, the “Report”) recommending that Defendant’s Motion to Dismiss (docket entry no. 16) be granted in part and denied in part, and that Defendant’s Motion to Strike Plaintiffs’ Nationwide Class Allegations (docket entry no. 18) be granted without prejudice to repleading if and when Plaintiffs replead their breach of express warranty claim. No objections to the Report have been filed by either party.

When reviewing a report and recommendation, the Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C.S. § 636(b)(1)(C) (LexisNexis 2016). “To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” Wilds v. United Parcel Service, Inc., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (internal citations and quotation marks omitted).

Having reviewed Magistrate Judge Moses’s thorough and well-reasoned Report, to which no objection has been made, the Court finds no clear error. Therefore, the Court adopts the Report in its entirety. Accordingly, Defendant’s Motion to Dismiss is granted with prejudice

with respect to Plaintiffs' negligent misrepresentation (Count VI) and unjust enrichment (Count V) claims, and granted without prejudice to an application for leave to replead with respect to Plaintiffs' breach of express warranty (Count IV) claims and any remaining claims to the extent that they are based on non-label advertising. Defendant's Motion to Dismiss is denied with respect to Plaintiff Robinson's New York General Business Law claims (Counts I and II), and Plaintiff Tyman's Florida Deceptive and Unfair Trade Practices Act claim (Count III). Defendant's Motion to Strike Plaintiffs' Nationwide Class Allegations is granted without prejudice to an application for leave to repleading if and when Plaintiffs replead their breach of express warranty claim. This Order resolves docket entry nos. 16 and 18. This case remains referred to Judge Moses for general pretrial management.

SO ORDERED.

Dated: New York, New York
January 18, 2018

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge